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Supreme Court, U.S.
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No. (1)

In The
Supreme Court of the United States

CHARLES HAINS and DANIEL MCSHANE,
Petitioners,

v.

JOSEPH MICHAEL LOGSDON,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

A panel of the Sixth Circuit reversed the District Court's grant of qualified immunity to the defendants in regard to their arrest of the plaintiff, a repeat criminal trespasser at an abortion clinic. The plaintiff has admitted a long history of protests, arrests, and convictions, most often of criminal trespassing, at the abortion clinic in question. The Sixth Circuit held that the defendants lacked probable cause to arrest because, after the officers were dispatched to respond to the clinic's complaints of plaintiff's criminal trespass, they "refused to listen" to exculpatory statements offered by plaintiff's fellow protestors.

The Sixth Circuit's ruling begs that the following question be addressed by this Court:

Does the accusation of a known, credible victim establish probable cause to arrest?

PARTIES TO THE PROCEEDING

Petitioners (defendants and appellees below):

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Respondents (plaintiff and appellant below):

JOSEPH MICHAEL LOGSDON

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TABLE OF CONTENTS

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

CITATIONS FOR OPINIONS BELOW 1

BASIS FOR JURISDICTION IN THIS COURT .. 1

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE 1

STATEMENT OF THE CASE 2

An altercation between Logsdon and the director of CWS 3

A conversation between Logsdon and a patient of CWS 3

The aftermath 4

REASONS FOR GRANTING CERTIORARI 5

CONCLUSION 8

APPENDIX

Appendix A: July 6, 2007 Sixth Circuit Court Opinion 1a

Appendix B: June 27, 2006 District Court Order 26a

Appendix C: December 13, 2007 Sixth Circuit Court Order 47a

TABLE OF AUTHORITIES

CASES

Beauchamp v. Noblesville,
320 F.3d 733 (7th Cir. 2003) 7

Logsdon v. Hains,
492 F.3d 334 (6th Cir. 2007) 1

Wilson v. Russo,
212 F.2d 781 (3rd Cir. 2000) 7, 8

STATUTES

28 U.S.C. 1254 1

CONSTITUTION

U.S. Const. amend. IV 1

U.S. Const. amend XIV 2

RULES

United States Supreme Court Rule 10 ..... 5, 8

CITATIONS FOR OPINIONS BELOW

The decision of the Sixth Circuit Court of Appeals is reported as *Logsdon v. Hains*, 492 F.3d 334 (6th Cir. 2007). App. 1-23. The order of the Court of Appeals denying the defendants' petition for rehearing en banc was not reported. App 47-48. The District Court's order granting defendants' motion to dismiss was not reported. App. 26-46.

BASIS FOR JURISDICTION IN THIS COURT

The Court of Appeals filed its original decision on July 6, 2007. The Court of Appeals denied the petitioners' request for a rehearing on banc on December 13, 2007. 28 U.S.C. 1254 confers jurisdiction on this Court to review on a writ of certiorari the opinion of the Court of Appeals.

CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE

UNITED STATES CONSTITUTION AMENDMENT IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

UNITED STATES CONSTITUTION AMENDMENT XIV (Section One):

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Joseph Michael Logsdon has long been a protestor against local Cincinnati abortion clinics. He has a history of arrests and convictions, including eight previous convictions for criminal trespass, related to his activism. App. 27.

This case arises from two separate incidents at Cincinnati Women's Services, a local abortion clinic. Cincinnati Women's Services (CWS) has a history of being the target of trespass offenders, including Logsdon, many times. App. 38. Logsdon has been a regular presence at CWS. He is familiar with the clinic director, Debi Jackson, and he understands that he is not welcome on the property. App. 27.

An altercation between Logsdon and the director of CWS

The first incident occurred on October 28, 2003. Logsdon was stationed on the public sidewalk in front of the clinic. He placed a sign on a fence that borders the clinic's parking lot. App. 27. The sign read: "GOD HAS A PLAN FOR YOUR BABY." Disturbed by the sign, a CWS patient informed the clinic director of it. App. 3-4. The director removed the sign from the fence and walked toward the clinic. App. 27-28. Logsdon verbally challenged the director and repeatedly demanded that she return the sign to him. Logsdon then marched onto the clinic property and physically took the sign from the director. App. 28.

The director called the Cincinnati police department and reported that Logsdon had committed a crime. She requested police assistance. App. 28.

Officer Hains responded to the director's call. Based on the phone call from the director, he arrested Logsdon for criminal trespass and disorderly conduct. A fellow protestor attempted to explain what happened, but Officer Hains told her, "Tell it to the judge." App. 28.

A conversation between Logsdon and a patient of CWS

The second incident occurred on June 18, 2004. A woman parked her car in the CWS parking lot. Logsdon wanted to speak with her. Not willing to stay on the public sidewalk, Logsdon moved closer and spoke to the woman through a chain link fence. After

several minutes, the woman went inside CWS. App. 28.

Someone from CWS then called the Cincinnati police department and reported that Logsdon had trespassed. App. 28-29.

Officer McShane responded to the call. Based on the information received from the clinic, Officer McShane arrested Logsdon who was still there. Again, a fellow protestor attempted to explain what happened, but Officer McShane did not act on that information. App. 29.

The aftermath

Logsdon was convicted of criminal trespass from the first incident. App. 29-30. The conviction was reversed on appeal by an intermediate appellate court. The appellate court determined that Logsdon was privileged to be on the clinic property because he was retrieving a protest sign. App. 30. Following his successful appeal, he filed a federal complaint.

In the complaint, Logsdon asserts that the officers lacked probable cause to arrest him. Specifically, he claims that before arresting him the officers should have listened to his fellow protestors. The officers moved to dismiss. The district court granted the motion. The court held that probable cause existed based upon the phone calls from the clinic. The district court emphasized that complaints of citizen witnesses who are also victims are given great weight when determining the existence of probable cause. App. 35-40.

Logsdon appealed. On July 6, 2007, the Sixth Circuit Court of Appeals reversed, finding that the officers did not act prudently or reasonably. The court concluded that the officers should have listened to the statements of fellow protestors for potentially exculpatory information before arresting Logsdon. App. 15.

The officers filed a petition for rehearing en banc. On December 13, 2007, the panel voted to deny the petition for rehearing. App. 47-48.

This Petition follows.

REASONS FOR GRANTING CERTIORARI

The theory in this case is simple: once an officer receives an accusation from a known, credible victim, probable cause exists. This Court should allow this petition because it will mark a brighter line for law enforcement officers. Officers should not be required to conduct quasi-trials in order to determine if they have probable cause to arrest. But if this Court allows the reported decision of the Sixth Circuit to stand, that is exactly what will be achieved. United States Supreme Court Rule 10.

In granting the defendants' motion to dismiss, the district court observed:

> Having reviewed this matter, the Court finds the arresting officers, in relying on testimony of a reliable witness and finding Logsdon at the scene of the alleged trespass, reasonably

> believed that Plaintiff committed trespass. App. 35.

The court emphasized that the report came from the apparent victim of the crime in question. As such, the report was "entitled to great weight when determining the existence of probable cause." App. 37-38. The district court rejected plaintiff's argument that the officers should have acted on the attempted explanations of Logsdon's fellow protestors, reasoning:

> Officer Hains was entitled to give little credence to Logsdon's fellow protestors and encourage them to take their testimony to the judge. Hains had a legal foundation for the arrest based on probable cause, and Hains was not required to conduct a quasi-trial in order to determine that Logsdon's trespass was technically privileged. App. 39.

The Sixth Circuit reversed, stating:

> In the course of initially assessing whether probable cause to arrest Plaintiff existed, Defendants respectively "turn[ed] a blind eye" to potentially exculpatory evidence when they refused to listen to the witnesses at the scene. App. 13.

But probable cause already existed. The accusations of the director of CWS and, later, an employee of CWS, were not anonymous. The officers who responded had no reason to doubt the truthfulness or reliability of the putative victims. And when they arrived, Logsdon was present, which

provided corroboration. Once an officer receives an accusation from a known, credible victim, probable cause exists.

The Seventh Circuit agrees with this approach. In *Beauchamp v. Noblesville*, the Court of Appeals provided that the complaint of a "single witness or putative victim alone is generally sufficient to establish probable cause to arrest." *Beauchamp v. Noblesville,* 320 F.3d 733, 743 (7th Cir. 2003).

Perhaps the most useful explication of this approach comes from Circuit Judge Garth of the Third Circuit Court of Appeals. In his concurring opinion to *Wilson v. Russo*, Circuit Judge Garth wrote:

> In probable cause analysis, it is the *reliability of the witness* (or victim) who has provided an identification of the assailant that is the focal point of the inquiry. It is not the reliability of the evidence provided in tandem with that individual's identification, which may be inconsistent with such an identification. As a result, the majority confuses a lack of reliability in an eyewitness with evidence that, at most, tends to exculpate the identified individual of wrongdoing and therefore simply is inconsistent with the victim's identification. Inconsistent or contradictory evidence may cut against a putative defendant's guilt at trial, but it cannot render invalid—i.e. eliminate the probable cause necessary to obtain an arrest warrant—a positive identification by an eyewitness who either a police officer or a magistrate deemed to

be reliable. *Wilson v. Russo*, 212 F.3d 781, 793 (3rd Cir. 2000).

Circuit Judge Garth concluded, "Accordingly, I part company with the majority opinion at the point where the majority seeks to distort the probable cause analysis to the point of virtually requiring trial-type proof at the very threshold stage of criminal investigation." *Wilson v. Russo*, 212 F.2d 781, 793 (3rd Cir. 2000).

Like the majority opinion in *Wilson v. Russo*, the panel of the Sixth Circuit Court of Appeals distorts the probable cause analysis to the point that police officers must conduct mini-trials at the very threshold of criminal investigation. Accordingly, this Court should allow this petition to bring clarity to the probable cause analysis and to resolve conflicts between the Courts of Appeals. United States Supreme Court Rule 10.

CONCLUSION

Based on the foregoing, the petitioners submit that the reported decision of the Sixth Circuit Court of Appeals is in conflict with the decisions of other Circuit Courts and involves an important federal question that should be settled by this Court. Accordingly, petitioners request that this Court grant the petition for writ of certiorari.

Respectfully submitted,

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